# Zawasima Sdn Bhd v Superintendent of Lands & Surveys Kuching Division

HIGH COURT (KUCHING) — LAND REFERENCE NO 15-01 OF 2002-1
CLEMENT SKINNER J
17 NOVEMBER 2005

*Land Law — Acquisition of land — Market value — Whether previous acquisition awards could be relied as comparables — Whether only evidence of sales of same land or similar land in the neighbourhood could be relied to determine market value of acquired land — Sarawak Land Code ss 47, 60(1) & 62(1)*

*Land Law — Acquisition of land — Method of valuation — Whether previous acquisition awards could be relied as comparables — Whether only evidence of sales of same land or similar land in the neighbourhood could be relied to determine market value of acquired land — Sarawak Land Code ss 47, 60(1) & 62(1)*

*Land Law — Acquisition of land — Objection against amount of compensation awarded — Whether previous acquisition awards could be relied as comparables — Whether only evidence of sales of same land or similar land in the neighbourhood could be relied to determine market value of acquired land — Sarawak Land Code ss 47, 60(1) & 62(1)*

This land reference was held pursuant to s 56 of the Sarawak Land Code ('the Code'). On 19 April 1973, pursuant to s 47 of the Code, the Minister of Lands and Mineral Resources, by way of a publication in the Sarawak Government Gazette notified all of his decision that a parcel of land known as Lot 133, Block 5, Muara Tebas Land District measuring an area of 2.112 hectares ('the subject land'), together with other parcels of land situate at the Salak and Muara Tebas Land Districts 'is likely needed for urban development'. Some 22 years later, the Minister of Resource Planning, by way of a notification published in the Sarawak Government Gazette on 9 November 1995 declared, pursuant to s 48 of the Code, that the subject land was required for a public purpose, namely, 'for road construction'. At the material time the registered proprietor of the subject land was Zawasima Sdn Bhd ('the objector').

On 24 November 1995 the Superintendent of Lands and Surveys, Kuching Division ('the respondent') after notifying the objector in accordance with s 49 of the Code that he would do so, held an enquiry to hear any claims for compensation that the objector had in respect of the resumption of its interest in the subject land. Thereafter, pursuant to s 51 of the Code the respondent awarded compensation in the sum of RM14,000 or RM6,628.78 per hectare ('the superintendent's award') to the objector in respect of the subject land. On 4 December 1995 the respondent took possession of the subject land and on 18 December 1995 the objector accepted the superintendent's award under protest and requested to have this matter referred to the High Court for determination. Pursuant to s 59 of the Code, two assessors were appointed to assist the court.

There was no dispute between the parties that pursuant to s 60(1) of the Code, in determining the amount of compensation to be awarded for the land resumed by government, the court shall take into consideration the market value of the subject land at the date of the publication of the notification under s 47. Since that took place on 19 April 1973, that was the material date of valuation to determine market value.

The following were noted: (1) the subject land was formerly part of Kuching lease measuring some 2.776 hectares. The government only acquired 2.112 hectares out of the total area for the purpose of a road, but because the portion acquired cut almost diagonally across the subject land, the objector was left with two separate diamond shaped pieces of land separated by a road after the acquisition. Each remaining parcel had been issued with a separate title; and (2) many other lands in the vicinity of the subject land were affected by the blanket notification issued by the Minister under s 47 of the Code on 19 April 1973. Since then the respondent had awarded compensation to several other landowners in respect of lands covered by the s 47 notification ('the previous awards').

The objector contended that the award was inadequate and were claiming to be paid a sum of RM139,070 made up of: (1) RM126,270 being the market value for the 2.112 hectares acquired calculated at RM60,000 per hectare; (2) RM9,525 being 25% of RM60,000 for compensation for damage due to severance of the subject land; and (3) valuation fees of RM2,825 under the heading 'injurious affection'.

The objector had relied on previous awards of the superintendent for similar lands acquired in the vicinity of the subject land under the same s 47 notification, as his comparables. Counsel for the respondent urged the court not to accept the objector's evidence, for two reasons: (1) the best guide to determine the fair market value was evidence of sales of the same land or similar land in the neighbourhood, after making some allowance for all the circumstances. According to counsel, it was only in the absence of recent sales of the same land or similar lands that other methods of ascertaining the market value can properly be resorted to; and (2) there was in fact evidence of a number of sales of similar land in the locality of the subject land which were sold on the open market at about the time of the s 47 notification. Accordingly, it was the submission of counsel for the respondent that the court should accept the respondent's valuer En Alfian's evidence that the market value of the subject land in 1973 was RM3,706.50 per hectare since his estimate of value was based on comparable sales transactions and not on the previous awards of the superintendent.

**Held**, increasing the superintendent's award be increased to RM45,000 per hectare:

(1) While the courts have warned themselves when looking at previous acquisition awards, that they are not truly reflective of a willing buyer / willing seller situation in the open market, the courts have not completely shut the door to acting on previous acquisition awards (see para 31).

(2) Given the fact that the past acquisition awards relied on by objector in his valuation reported all related to lands covered by the same s 47 notification and were in respect of lands in the same general vicinity or neighbourhood to the subject land, and given also that these past awards were given at about the same

time as the award in the present case, give or take one or two years, and relate to the same valuation date, they may be relied on as comparables by the objector and the court (see para 31).

(3) Given the fact that the superintendent had stated that the amount of compensation, ie RM14,000 for the 2.112 hectares acquired, which works out to RM6,628.70 per hectare, 'was assessed by determining the market value of the land by comparison with sales of comparable land which took place about the time when the land was gazetted under s 47 of the Land Code' and that 'the compensation for land took into consideration the locality, level, title restrictions, development potential etc', in the light of s 62(1) there was no basis upon which the court could accept En Alfian's evidence that RM3,706.50 per hectare was the fair market value of the land as at 19 April 1973. By virtue of s 62(1) of the Code, the assessors could not award the objector an amount less than the amount awarded by the respondent under s 51 of the Code (see para 33).

(4) If the respondent wishes to contend that the previous awards are not representative of fair market value in respect of the subject land in this reference for whatever reasons the respondent may wish to advance, then the evidential burden of doing so rests on the respondent and until the respondent has discharged that evidential burden it does not shift back to the objector to show otherwise. In this case the respondent had not discharged this evidential burden (see para 36).

(5) Although the objector had succeeded in demonstrating that the superintendent's award was inadequate, it did not follow as a matter of course that the court must accept the valuation of the objector that the market value for the subject land was RM60,000 per hectare as at 19 April 1973. Having considered all the evidence regarding fair market value of the subject land as at 19 April 1973, the court found that out of the previous acquisition awards, those for Lease 6073, KOT 14305 and Lot 35 were the most suitable comparables in terms of location (proximity) to the subject land and time of award (being one year different), and also in terms of size but allowing suitable adjustments for shape of land and access in 1973. Compensation of RM45,433 per hectare was paid for Lease 6073, while RM56,100 per hectare was paid for KOT 14305 and RM46,788 per hectare was paid for Lot 35. Having allowed for the necessary adjustments, the assessors had arrived at an opinion that the fair market value for the subject land as at 19 April 1973 was RM45,000 per hectare. The court concurred with their opinion (see para 37).

(6) With regard to the objector's claim for severance and injurious affection, the court found that no amount should be awarded in respect of these two claims. After the subject land was severed, the remaining two portions had not suffered from diminution in their value. Although they may be diamond shaped, that in itself could not justify a loss in value because they had each been issued with title which showed that they were held under special conditions which state that: 'This land is to be used only for agriculture purposes'. So their shape should not greatly affect their use. As far as injurious affection was concerned, there was no evidence to support the claim. No diminution to earnings from the land had been demonstrated either (see para 38).

**[Bahasa Malaysia summary**

Rujukan hartanah ini dibuat selaras dengan s 56 Kanun Tanah Sarawak ('Kanun tersebut'). Pada 19 April 1973, selaras dengan s 47 Kanun tersebut, Menteri Tanah dan Sumber Galian, melalui satu penerbitan di dalam Gazet Kerajaan memberitahu semua mengenai keputusan yang bahawa sebidang tanah yang dikenali sebagai Lot 133, Blok 5, Daerah Muara Tebas yang berukuran lebih kurang 2.112 hektar ('tanah tersebut'), bersama-sama dengan tanah yang terletak di Daerah Salak dan Daerah Muara Tebas 'berkemungkinan besar akan diperlukan untuk pembangunan bandar'. Setelah 22 tahun berlalu, Menteri Rancangan Sumber, melalui satu notis yang diterbitkan di dalam Gazet Kerajaan Sarawak pada 9 November 1995 mengisytiharkan, selaras dengan s 48 Kanun tersebut, tanah tersebut diperlukan untuk tujuan awam, iaitu, 'untuk pembinaan jalan'. Pada kesemua masa yang material pemilik berdaftar tanah tersebut adalah Zawasima Sdn Bhd ('Pembantah').

Pada 24 November 1995 Penguasa Tanah dan Ukur, Bahagian Kuching ('responden') selepas memberitahu pembantah selaras dengan s 49 Kanun tersebut bahawa beliau akan membuat satu siasatan untuk mendengar sebarang tuntutan pembantah mengenai pampasan berhubung dengan kepentingan pembantah dalam tanah tersebut. Kemudian dari itu, selaras dengan s 51 Kanun tersebut, responden diberi award pampasan sebanyak RM14,000 atau RM6,628.78 se hektar ('award penguasa') kepada pembantah berhubung dengan tanah tersebut. Pada 4 Disember 1995 responden mengambil milikan tanah tersebut dan pada 18 Disember 1995 pembantah menerima award penguasa dengan bantahan dan memohon agar perkara ini dirujuk ke Mahkamah Tinggi untuk diputuskan. Menurut s 59 Kanun Tersebut, dua orang pentaksir dilantik bagi membantu mahkamah.

Tiada pertelingkahan di antara pihak-pihak dan selaras dengan s 60(1) Kanun tersebut, dalam memutuskan jumlah pampasan yang akan diberikan untuk tanah yang diambil oleh kerajaan, mahkamah akan mengambilkira nilai pasaran tanah tersebut pada tarikh notis pemberitahuan dibawah s 47. Oleh kerana notis pemberitahuan diterbitkan pada 19 April 1973, tarikh inilah merupakan tarikh material untuk penilaian bagi menentukan nilai pasaran.

Yang berikut diperhatikan: (1) tanah tersebut dahulunya adalah sebahagian dari pajakan Kuching yang berukuran lebih kurang 2.776 hektar. Kerajaan hanya mengambil 2.112 hektar dari jumlah penuh keluasan untuk tujuan membina jalan, akan tetapi oleh kerana bahagian yang diambil memotong melintang tanah tersebut, selepas pengambilan tersebut, tanah pembantah terpisah dan terbentuk seperti dua berlian yang dipisahkan oleh jalan tersebut. Kedua-dua tanah tersebut telah masing-masingnya diberikan surat ikataan hakmilik yang berbeza; dan (2) terdapat banyak lagi tanah disekeliling tanah tersebut yang terlibat dengan notis umum yang dikeluarkan oleh Menteri dibawah s 47 Kanun tersebut pada 19 April 1973. Sejak dari itu responden telah memberi pampasan kepada beberapa tuanpunya tanah yang lain yang mana tanahnya terlibat dengan notis s 47 itu ('award-award terdahulu').

Pembantah mengatakan bahawa award tersebut tidak mencukupi dan menuntut jumlah RM139,070 yang terdiri daripada: (1) RM126,270 sebagai nilai pasaran bagi 2.112 hektar yang diambil yang dikira pada RM60,000 sehektar; (2) RM9,525

sebagai 25% dari RM60,000 sebagai pampas an untuk gantirugi yang diakibatkan oleh pemisahan tanah tersebut; dan (3) yuran penilaian sebanyak RM2,825 dibawah tajuk 'injurious affection'.

Pembantah telah bergantung kepada award-award terdahulu yang diberikan oleh Penguasa untuk tanah serupa yang telah diambil disekitar tanah tersebut dibawah notis s 47 yang sama, sebagai perbandingan. Peguamcara kepada responden mengesa mahkamah untuk tidak menerima keterangan pembantah itu, atas dua sebab: (1) panduan terbaik untuk menentukan nilai pasaran yang wajar adalah dari keterangan penjualan tanah yang sama atau tanah yang serupa dikawasan itu. Menurut peguamcara itu, hanya apabila tiada penjualan tanah yang serupa barulah cara lain untuk menentukan nilai pasaran diambil; dan (2) sebenarnya terdapat keterangan mengenai beberapa penjualan tanah yang serupa di kawasan berhampiran dengan tanah tersebut yang mana jualan telah dibuat dipasaran terbuka pad sekitar masa notis s 47 tersebut. Dari itu, peguamcara responden menghujahkan bahawa mahkamah wajar menerima keterangan En Alfian, jurunilai responden yang nilai pasaran tanah tersebut dalam tahun 1973 adalah RM3,706.50 sehektar kerana penilaiannya berdasarkan perbandingan transaksi-transaksi jualan dan bukannya award-award terdahulu penguasa.

**Diputuskan**, menambahkan award yang diberi Penguasa kepada RM45,000 sehektar:

(1) Walaupun mahkamah telah memberi amaran kepada ia sendiri apabila melihat award-award terdahulu, yang bahawa award tersebut tidak memberi gambaran yang sebenar situasi pembeli yang bersedia dan penjual yang bersedia di pasaran terbuka, mahkamah bukanlah tidak boleh bertindak pada award-award pengambilan terdahulu (lihat perenggan 31)

(2) Memandangkan bahawa award-award pengambilan yang digunapakai oleh pembantah dalam penilaiannya adalah berhubung dengan tanah-tanah yang terlibat dengan notis s 47 yang sama dan juga berada dikejiranan yang sama dengan tanah tersebut, dan memandangkan juga yang bahawa award-award terdahulu itu diberikan pada masa yang lebihkurang sama dengan kes semasa, lebih atau kurang satu atau dua tahun sahaja, dan berhubung dengan tarikh penilaina yang sama, ia boleh digunakan sebagai perbandingan oleh pembantah dan mahkamah (lihat perenggan 31).

(3) Memandangkan penguasa telah menyatakan bahawa junlah pampasan, iaitu RM14,000 untuk 2.112 hektar yangtelah diambil, yang mana menjadikan RM6,628.70 sehektar, 'telah dinilai dengan menentukan nilai pasaran tanah tersebut dibanding dengan jualan-jualan tanah yang serupa pada masa yang mana tanah itu digazet dibawah s 47 Kanun Tanah 'dan bahawa 'pampasan untuk tanah tersebut telah mengambilkira kawasan setempat, tahap, sekatan-sektan hakmilik, potensi pembangunan dll', dalam ertikata s 62(1) tiada asas bagi mahkamah untuk menerima keterangan En Alfian yang bahwa RM3,706.50 sehektar adalah nilai pasaran yang wajar bagi tanah tersebut pada 19 April 1973. Menurut s 62(1) Kanun tersebut, pentaksir tidak boleh

memberi award kepada pembantah yang mana jumlahnya kurang daripada jumlah yang telah diberikan oleh responden dibawah s 51 Kanun tersebut (lihat perenggan 33).

(4) Jika responden ingin membantah yang award-award terdahulu tidak merupakan satu representasi nilai pasaran yang wajar berhubung dengan tanah tersebut dalam rujukan ini atas apa-apa sebab sekalipun, namun begitu beban bukti adalah terletak di atas bahu responden dan selagi responden tidak melepaskan beban bukti ini, ia tidak berbalik kepada pembantah untuk menunjukkan yang sebaliknya. Dalam kes semasa, responden tidak melepaskan beban bukti ini (lihat perenggan 36).

(5) Walaupun pembantah telah berjaya menunjukkan yang award penguasa tidak mencukupi, ianya tidak secara serta merta yang mahakamh mestilah menerima penilaian yang dibuat oleh pembantah yang bahawa nilai pasaran tanah tersebut adalah RM60,000 sehektar pada 19 April 1973. Setelah menimbang kesemua keteranagn berhubung dengan nilai pasaran yang wajar bagi tanah tersebut pada 19 April 1973, mahkamah mendapati bahawa dari award-award pengambilan yang terdahulu, Pajakan 6073, KOT 14305 dan Lot 35 adalah perbandingan yang paling sesuai dari segi lokasi dan waktu award diberikan (hanya beza setahun), dan juga dari segi saiz tetapi penyesuain perlu dibuat untuk bentuk tanah dan akses dalam tahun 1973. Pampasan sebanyak RM45,433 sehektar dibayar untuk Pajakan 6073, sementara RM56,100 sehektar dibayar untuk KOT 14305 dan RM46,788 sehektar untuk Lot 35. Setelah membuat penyesuaian yang perlu, pentaksir-pentaksir telah mencapai keputusan yang nilai pasaran yang wajar bagi tanah tersebut pada 19 April 1973 adalah RM45,000 sehektar. Mahkamah bersetuju dengan keputusan tersebut (lihat perenggan 37).

(6) Berhubung dengan tuntutan Pembantah untuk pemisahan dan "injurious affection", Mahkamah memutuskan bahawa tiada jumlah patut diberikan berhubung dengan kedua-dua tuntutan tersebut. Selepas tanah tersebut dipisahkan, dua plot yang tinggal itu tidak mengalami pengurangan dari segi nilai mereka. Walaupun ia berbentuk seperti berlian, bentuk itu secara sendirinya tidak memberi justikasi pengurangan nilai kerana ia telah diberikan suratikan hakmilik dengan syarat khas yang bahawa: 'Tanah ini hanya untuk kegunaan pertanian sahaja'. Jadi bentuknya tidak akan memberi kesan negatif kepada keguanaannya. Berhubung dengan "injurious affection', tiada keterangan dikemukakan untuk menyokong tuntutan itu. Tiada pengurangan hasil dari tanah tersebut ditunjukkan juga (lihat perenggan 38).]

**Notes**

For cases on market value, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1911–1939.

For the case on method of valuation, see 8(1)*Mallal's Digest* (4th Ed, 2006 Reissue) para 1941.

For the case on objection against amount of compensation awarded, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 1949.

**Cases referred to**

*Chua Say Hai & Ors v Collector of Land Revenue, Kuala Lumpur* [1976] 2 MLJ 99 (refd)
*Hong Bee Realty Ltd v Collector of Land, Kuala Lumpur* [1972] 1 MLJ 125 (refd)
*Khoo Peng Loong v Superintendent of Lands and Surveys Third Division* [1966] 2 MLJ 156 (refd)
*Pemungut Hasil Tanah Seberang Perai Utara, Butterworth v Bertam Consolidated Rubber Co Ltd* [1990] 1 MLJ (refd)
*Pentadbir Tanah Daerah Petaling v Glenmarie Estate Ltd* [1992] 1 MLJ 331 (refd)
*Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243 (refd)
*Nanyang Manufacturing Co v The Collector of Land Revenue, Johor* [1954] 20 MLJ 69 (refd)
*Narayana Gajapatiraju v The Revenue Divisional Officer, Vizagaparam* [1939] AC 302 (refd)
*Ng Tion Hong v Collector of Land Revenue, Gombak* [1984] 2 MLJ 335 (refd)

**Legislation referred to**

Sarawak Land Code ss 47, 48, 56, 60, 61

*Liew Tang Chieh (Tang & Partners Advocates, Kuching).*

*Dewi Rahmaz Majidi (State Attorney General's Chambers, Sarawak).*
*Chieng Yu Tang (Henry Butcher, Lim, Long & Chieng) (as the Assessors).*

**Clement Skinner J:**

**[1]** This land reference is held pursuant to s 56 of the Sarawak Land Code (hereafter 'the Code') On 19 April 1973, pursuant to s 47 of the Code, the Minister of Lands and Mineral Resources, by way of a publication in the Sarawak Government Gazette (GN No 1132) notified all of his decision that a parcel of land known as Lot 133, Block 5, Muara Tebas Land District (formerly part of Kuching Lease 3541) measuring an area of 2.112 hectares (hereafter 'the subject land') together with other parcels of land situated at the Salak and Muara Tebas Land Districts 'is likely needed for urban development".

**[2]** Some 22 years later, the Minister of Resource Planning, by way of a notification published in the Sarawak Government Gazette on 9 November 1995 (vide GN No 3135) declared, pursuant to s 48 of the Code that the subject land is required for a public purpose, namely 'for road construction'. At the material time the registered proprietor of the subject land was Zawasima Sdn Bhd (hereafter 'the objector').

**[3]** On 24 November 1995 the Superintendent of Lands and Surveys, Kuching Division (hereafter 'the respondent') after notifying the objector in accordance with s 49 of the Code that he would do so, held an enquiry to hear any claims for compensation that the objector had in respect of the resumption of its interest in the subject land. Thereafter, pursuant to s 49 of the Code the respondent awarded compensation in the sum of RM14,000.00 or RM6,628.78 per hectare

('the Superintendent's Award') to the objector in respect of the subject land. On 4 December 1995 the respondent took possession of the subject land and on 18 December 1995 the objector accepted the Superintendent's Award under protest and requested to have this matter referred to the High Court for determination. Pursuant to s 59 of the Code, two assessors in the person of Tuan Haji Suhaimi Harun and Mr Chieng Yu Tang were appointed to assist the court.

**[4]** There is no dispute between the parties to this reference that pursuant to s 60 (1) of the Code, in determining the amount of compensation to be awarded for the land resumed by the government, the court shall take into consideration the market value of the subject land at the date of the publication of the notification under s 47. Since that took place on 19 April 1973, that is the material date of valuation to determine market value.

**[5]** It is also not in dispute between the parties that in determining the market value of the subject land, the court shall have regard to the matters set out in s 60 and to disregard those matters mentioned in s 61 of the Code.

**[6]** With reference to the term 'market value' which the court is required to determine in this reference, the Code itself does not define the term but the expression has been adequately discussed in many other cases where the principles to be applied in determining market value are set out. It will be sufficient to refer to two such cases.

**[7]** In*Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243, which was a case arising from a Land Reference held in Sarawak under the provision of s 56 of the Code, the Federal Court held that the principles applicable for determining the market value of land are the same as under the Indian Land Acquisition Act 1894 and followed the advice of the Privy Council in Vyricheria Narayana Revenue Divisional Officer, Vizagaparam [1939] AC 302, 312, where Lord Romer stated what the principles applicable in India were in the following terms:

> The compensation must be determined … by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion. This is implied in the common saying that the value of the land is not to be estimated at its value to the purchaser … it may also be observed in passing that it is often said that it is the value of the land to the vendor that has to be estimated. This, however, is not in strictness accurate. The land, for instance, may have for the vendor a sentimental value far in excess of its "market value". But the compensation must not be increased by reason of any such consideration. The vendor is to be treated as a vendor willing to sell at "the market price" … It is perhaps desirable in this connection to say something about this expression "the market price". There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality in similar positions, and this is what must be meant in general by "the market value".....

**[8]** The decision in *Superintendent of Lands and Surveys Sarawak v Aik Hoe & Co* was followed in *Ng Tion Hong v Collector of Land Revenue, Gombak* [1984] 2 MLJ 35 where the Federal Court stated the following principles in determining the market value:

> First, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity to the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion. Secondly, the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions. Thirdly, its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future e.g. the possibility of it being put to use for building or other developments. Fourthly, in considering the nature of the land regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like. Fifthly, estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence.

**[9]** Next, must be said about the burden that rests upon an objector or landowner who is dissatisfied with a Superintendent's Award (which is handed down after an enquiry) and requests that the matter be referred to the court for determination. In Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd, Suffian J (as he then was) speaking for the Federal Court held that it is for the owners to prove that the award was inadequate. This is what his Lordship said about the matter at p 247:

> ..... it is for the owners to prove that the award is inadequate. Broomfield J in *Assistant Development Officer, Bombay v Tayaballi Allibhoy Bohari A.I.R.* [1933] Bom 361 said at p 364:
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> The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing prima facie that the award is inadequate, then Government must support the award by producing evidence".

**[10]** Next, the subject land must be described in greater detail:

(a) Location: Presently located along Jalan Bako, Kuching, some 18 km from Kuching City Centre. When the land was acquired access was via Sungei Sarawak about 1 km to the east;

(b) Area: Was originally 2.776 hectares, of which 2.112 hectares were acquired by government.

(c) Shape: More rectangular than diamond shaped (which is what the objector described the shape as);

A (d) Physical features: Generally flat in terrain;

(e) Surround land use: Lands in the vicinity are generally flat and swampy in terrain, mostly still covered in wild grasses, bushes and coconut trees. Surrounding properties are predominantly vacant and undeveloped lands interspersed with dwelling houses and industrial lots.

B (f) Title conditions affecting land:

(i) Classification/category: Mixed Zone Land / country land;

(ii) Term: Expiring on 8 January 2011;

(iii) Special conditions: This land is to be used for agriculture purposes.

C

**[11]** Before turning to address the factual issues in this reference, two other matters should be noted at this stage. First, the subject land was formerly part of Kuching lease measuring some 2.776 hectares. The government only acquired 2.112 hectares out of the total area for the purpose of a road but because the portion acquired cut almost diagonally across the subject land, the objector was left with two sperate diamond shaped pieces of land sperated by a road after the acquisition. Each remaining parcel has been issued with a separate title. They are Lot 132 Block 5 Muara Tebas Land District measuring 3,680 sq metres (hereafter "Lot 132") and Lot 134 Block 5 Muara Tebas Land District, measuring 2,670 sq metres (hereafter "Lot 134") respectively.

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**[12]** Secondly, it is to be noted that many, many other lands in the vicinity of the subject land were affected by the blanket notification issued by the Minister under s 47 of the Code on 19 April 1973. Since then the respondent had awarded compensation to several other landowners in respect of lands covered by the aforementioned s 47 notification. I shall refer to these awards as the respondent's "previous awards". The significance of these previous awards is that in making them the respondent was obliged by law to determine their market value as at 19 April 1973 which is the same valuation date for determining the market value for the subject land.

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**[13]** With that I turn to consider the issue before the court, namely whether the Superintendent's Award is inadequate?

**[14]** The objector contends that the award is inadequate and are claiming to be paid a sum of RM139,070.00 made up of:

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(i) RM 126,270.00 being the market value for the 2.112 hectares acquired calculated at RM60,000 per hectare;

(ii) RM9,525.00 being 25% of RM60,000.00 for compensation for damage due to severance of the subject land;

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(iii) Valuation fees of RM2,825.00 under the heading 'injurious affection'.

**[15]** The objector also claims interest at 4% per annum under s 72 ie from the date of possession and interest at 4% per annum under s 69 ie on the excess of compensation from the date of possession till date of payment.

**[16]** In support of its claim to be paid RM60,000 per hectare, the objector relied on the evidence of its expert witness, Mr Wong Ing Siong, a registered valuer with the Board of Valuers Appraisers and Estate Agents, Malaysia. Mr Wong is presently the Managing Director of M/S CH Williams, Talhar, Wong & Yeo Sdn Bhd Sarawak. Mr Wong's other professional qualifications and experience are enumerated in his evidence-in-chief. His valuation report on the subject land was admitted in evidence as exh.P2.

**[17]** The respondent contends that the objector has failed to discharge its burden of showing that his award is inadequate and urged the court to affirm his award and dismiss the objectors claim with costs. In support of his contention, the respondent relies on the expert evidence of En Alfian Bin Bawi, a valuer attached to the Lands and Surveys Department, Sibu who has been with the Department for 11 years. He graduated with a Degree in Estate Management from Universiti Teknologi Mara in 1993. En Alfian's valuation report on the subject land was admitted in evidence as exh.Rl which shows that he estimated the market value of the subject land as at 19.04.1973 at RM1,500.00 per acre or RM3,706.05 per hectare.

**[18]** The objector also called other witnesses to prove its case but their evidence was not directly relevant to the question of market value of the subject land. One witness Mr Sim Kui Hock (OW1), a director of the objector gave evidence regarding the events leading up to this reference. Another witness, Puan Amelati Parnell (OW3) a Deputy Registrar of the High Court at Kuching was called by the objector to tender in evidence a letter (exh.P6) written by her on the direction of Mr Justice Ian Chin who had heard a Land Reference No 15–01–1998 concerning another piece of land, Kuching lease of Crown Land No 6601 measuring 5.6860 hectares which was covered by the same s 47 notification as the subject land was and which land was also in the vicinity of the subject land. In 1995 the Superintendent had awarded compensation of RM147,952.00 in respect of those land. On being referred to the High Court, Mr Justice Ian Chin increased the award by another RM152,068.00 (which would work out to RM52,764.68 per hectare). For this see the documents in "AB3". When the State Attorney-General's Chambers wrote to Mr Justice Ian Chin asking for his grounds of decision, OW3 was directed to reply as follows (in exh P6):

**[19]** While I can understand why the above letter was written in that tone, unfortunately in the absence of any grounds for the award, the assessors and I have not found exh P6 or the award in Land Reference No 15–01–98–1 to be of any assistance.

**[20]** Coming back to the evidence of market value adduced on behalf of the objector, although Mr Wong Ing Siong testified that he had adopted the comparable sales method of valuation, it is evident from his oral testimony as well as his valuation report (PW2) that Mr Wong relied on previous awards of the Superintendent of Lands and Surveys for similar lands acquired in the vicinity of the subject land under the same s 47 notification, as his comparables. This is what Mr Wong said in his evidence-in-chief.

A Q: Please elaborate more on the method of valuation of this report.

A: The method of valuation adopted is the comparable sale method of valuation. But for this subject case, the comparables that we rely upon are the awards made by the Superintendent of Lands and Surveys, Kuching Division for similar lands in the vicinity which are under the same s 47 notification.

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**[21]** This is also what was disclosed in Mr Wong's valuation report exh.P2 at p 12 where it states:

C In our determination of the market value of land for the subject land as land taking using the Comparable Sale Method of Valuation, we would resort to available awards by the Superintendent of Lands and Surveys for lands in the neighbourhood.

**[22]** Mr Wong's evidence shows that as comparables, he selected ten previous
D awards of the Superintendent in respect of lands in the neighbourhood of the subject land which were also affected by the same s 47 notification. The ten comparable previous awards of the Superintendent are described in Table 2 of Mr Wong's report (P 2) and are set out below:

E **[23]** As can be seen from Table 2, while all these ten awards were covered by the same s 47 notification, the Superintendent made his award of compensation in these ten cases between the years 1993, 1994 and 1995. It will be recalled that the respondent made his award of RM14,000 in this case on 24 November 1995 which is the same year as three of the awards in table 2 and two years after one of the awards in table 2 and one year after six of the awards in table 2.

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**[24]** Counsel for the objector submitted that when analysed these awards show that the Superintendent awarded between RM38,281 and RM82,478 per hectare as the market value for similar lands located in the neighbourhood of the subject land. I should point out that one of these previous awards for RM85,000 per hectare
G (Item 2 in table 2) was in respect of a piece of Native Land ie F/L 29 Block 5 but Mr Wong acknowledged in cross-examination that the valuation date for this parcel should be 1996 (when the gazette notification to extinguish the rights in F/L 29 was published) and not 1973 and so the Superintendent's previous award for this lot should be ignored (see Mr Wong's evidence at p 36 notes of proceedings).
H Hence counsel for the objector did not refer to it above.

**[25]** Out of the 10 previous awards selected by Mr Wong, he said he selected the awards shown in item 1 and 2 of Table 2 as the best comparables as they were closest in location to the subject land. If the award for item 2 of Table 2 ie F/L 29 is to be
I disregarded because its valuation date was 1996, it can be seen that for the other three pieces of land described in Item 2 the Superintendent awarded a sum of RM45,433.00 per hectare for lease 6673, RM56,100 per hectare for Kuching Occupation Ticket 14305 and RM46,788 per hectare for Lot 35. It was on the basis of these previous awards that Mr Wong arrived at his valuation of RM60,000 as indicated in his valuation report exh P 2.

Mr Wong also sought to justify his valuation of RM60,000 per hectare for the subject land in two other ways. At p 15, Item 18.0 of his report he set out in Table 3 the particulars of about eight pieces of lands which were also located in the vicinity of the subject land but which sold in the open market. At p 14 of his report exh P 2, Mr Wong said:

> Even at RM60.000.00 per hectare (ie for the subject land), the comparison would be low when compared with the Market Value as at 9 November 1995 (Gazette date of s 48 Declaration). The Market Value as at 9 November 1995, as can be noted from the sales under Item 18.0 below, would be RM210,000 per hectare for the subject land.

**[26]** The court must at once say that this part of Mr Wong's evidence cannot be given much weight or relied upon as it is quite clear that the valuation date for these sales transactions is 9 November 1995, whereas the relevant valuation date for the subject land is 19 April 1973. The two valuation dates are too remove to be of any use.

**[27]** During the hearing, Mr Wong also referred to 7 other previous awards made by the respondent between 1995, 1996 and 1997 of lands covered by the same s 47 notification. There previous awards were in respect of Lots 700, 747 and 750 Block 5 Muara Tebas Land District, Kuching Occupation Ticket No 11908, 750 Block 5 Muara Tebas Land District and Lots 389, 399 and 396 Block 5, Muara Tebas Land District. These awards show that the respondent paid between RM61,306 and RM120,000 per hectare for these lands. So again, Mr Wong said that by comparison his valuation of RM60,000 per hectare was on the low side. Again, the court cannot place much weight on this part of Mr Wong's evidence. It was not the basis on which he arrived at his opinion of RM60,000 per hectare in his valuation report exh P 2. Obviously this evidence is an after thought.

**[28]** Counsel for the respondent urged the court not to accept Mr Wong Ing Siong's evidence of what the market value for the subject land in 1973 was and should be, for two reasons. First, she said that whereas Mr Wong had relied on previous awards of the Superintendent, it had been said that the best guide to determine the fair market value is evidence of sales of the same land or similar land in the neighbourhood, after making some allowance for all the circumstances (see*Nanyang Manufacturing Co v The Collector of Land Revenue, Johor* [1954] 20 MLJ 69 at p 71). According to counsel, it was only in the absence of recent sales of the same land or similar lands that other methods of ascertaining the market value can properly be resorted to (see*Chua Say Hai & Ors v Collector of Land Revenue, Kuala Lumpur* [1976] 2 MLJ 99 at pg 101).

**[29]** Secondly, it was counsel's submission that there was in fact evidence of a number of sales of similar land in the locality of the subject land which were sold on the open market at about the time of the s 47 notification. The respondent's expert witness, En Alfian (RW1) has made a compilation of these comparable sales transactions and set them out in Appendix A of his valuation report (R 1). En Alfian testified that he selected 13 pieces of land in the vicinity of the subject land which were sold between the years 1972 to 1976. When analysed these 13 sales show that

land in the vicinity of the subject land fetched between RM763 per acre or RM1,885.37 per hectare to RM5,034 per acre or RM12,439.00 per hectare. Out of the 13 sales transactions, En Alfian selected sale No 5 ie of Lot 377 Muara Tebas Land District which was similar in size to the subject land (5.13 acres) which was sold in 1974 for RM1,200 per acre or RM2,965.20 per hectare, as the most suitable sales comparable for this case. Based on this sales transaction and making adjustments for such factors as location ie closeness to Kampong Senari and Kg Sejingkat, accessibility, size and shape of the land, En Alfian concluded that the market value of the subject land on 19 April 1973 was RM1,500 per acre or RM3,706.50 per hectare or RM7,828.12 for all the land acquired.

**[30]** Accordingly, it was the submission of counsel for the respondent that the court should accept En Alfian's evidence that the market value of the subject land in 1973 was RM3,706.50 per hectare since his estimate of value was based on comparable sales transactions and not on the previous awards of the Superintendent.

**[31]** With reference to counsel for the respondent's first contention, while it is true that generally speaking the courts have warned themselves when looking at previous acquisition awards that they are not truly reflective of a willing buyer / willing seller situation in the open market (see the decision of Abdul Hamid J (as he then was) in*Hong Bee Realty Ltd v Collector of Land Revenue, Kuala Lumpur* [1972] 1 MLJ 125), the courts have not completely shut the door to acting on previous acquisition awards. Thus in *Khoo Peng Loong v Superintendent of Lands and Surveys Third Division* [1966] 2 MLJ 156 Lee Hon Hoe J (as he then was) took into account past awards. In*Pentadbir Tanah Daerah Petaling v Glenmarie Estate Ltd* [1992] 1 MLJ 331, it was held by the Supreme Court that it would not be wrong to take into account previous awards in acquisition cases if the previous award relate to areas earlier acquired from within the same estate. In the *Glenmarie Estate* case the estate concerned some measured 1,239.5 acres and different parts of it were acquired at different times. In*Pemungut Hasil Tanah Seberang Perai Utara, Butterworth v Bertam Consolidated Rubber Co Ltd* [1990] 1 MLJ 268 it was held by the Supreme Court that awards in past acquisition cases could be used when there was no comparable sales available. So it really depends on the circumstances disclosed in each case whether past acquisition awards should be looked at. Reverting to the facts of this case, I am satisfied that given the fact that the past acquisition awards relied on by Mr Wong Ing Siong in Table 2 of his valuation report all related to lands covered by the same s 47 notification and were in respect of lands in the same general vicinity or neighbourhood to the subject land, a situation not unlike that described in the *Glenmarie Estate* case, and given also that these past awards were given at about the same time as the award in the present case, give or take one or two years and relate to the same valuation date, they may be relied on as comparables by the objector and the court.

**[32]** With regard to counsel for the respondent's second contention, we are unable to accept En Alfian's valuation that the market value of the subject land as at 19 April 1973 was RM1,500 per acre or RM3,706.50 per hectare. Counsel for the objector has pointed out, and we agree with him that En. Alfian's valuation is inconsistent with s 62 (1) of the Code which reads:

Where the applicant has made a claim to compensation pursuant to any notice under s 49, the amount awarded to him shall not exceed the amount so claimed or be less than the amount awarded by the Superintendent under section 51.

**[33]** Given the fact that in para (c) of his statutory statement the Superintendent had stated that the amount of compensation ie RM14,000 for the 2.112 hectares acquired which works out to RM6,628.70 per hectare 'was assessed by determining the market value of the land by comparison with sales of comparable land which took place about the time when the land was gazetted under s 47 of the Land Code' and that 'the compensation for land took into consideration the locality, level, title restrictions, development potential etc", in the light of s 62 (1) there is no basis upon which the court can accept En Alfian's evidence that RM3,706.50 per hectare was the fair market value of the said land as at 19 April 1973. By virtue of s 62 (1) of the Code, the assessors cannot award the objector an amount less than the amount awarded by the respondent under s 51 of the Code.

**[34]** I should further point out that there is also no evidence before this court of what or which sales transactions the Superintendent had relied on as sales of comparable lands when determining the market value for the subject land which he adverted to in his statutory statement.

**[35]** I am satisfied that the objector has succeeded in discharging the onus that lay on it of showing that the Superintendent's Award was inadequate. But counsel for the respondent submitted that the previous awards of the respondent were not suitable to be relied on as evidence of market value because the amount awarded in them might include other elements mentioned in s 60 (1) of the Code which might not be applicable to the subject land. Accordingly it was counsel's submission that since the objector seeks to rely on these previous awards, it had the onus of proving that the previous awards do not include any of the elements mentioned in s 60 (1) of the Code before they can be of any evidentiary value.

**[36]** I do not agree with this submission. As I indicated earlier, previous acquisition awards have been considered before by the courts. In my view, the previous awards of the respondent constitute evidence of what amount the Superintendent had paid as market value for similar lands in the vicinity of the subject land on the same valuation date ie 19 April 1973. Having said that I should go on to say that the court will be astute to look at the previous award in a meaningful way so as to ascertain if the land being dealt with in the previous award share similarities with the subject land or otherwise and whether adjustments need to be made for location, size, shape and so on. If the respondent wishes to contend that the previous awards are not representative of fair market value in respect of the subject land in this reference for whatever reasons the respondent may wish to advance, then the evidential burden of doing so rests on the respondent and until the respondent has discharged that evidential burden it does not shift back to the objector to show otherwise. In this case I find the respondent had not discharged the evidential burden I spoke of.

**[37]** Although I find that the objector had succeeded in demonstrating that the Superintendent's award is inadequate, it does not follow as a matter of course that the

court must accept the valuation of Mr Wong Ing Siong that the market value for the subject land was RM60,000.00 per hectare as at 19 April 1973. Having considered all the evidence regarding fair market value of the subject land as at 19 April 1973, we find that out of the previous acquisition awards, those for lease 6073, KOT 14305 and Lot 35 ie items 1, l(a) and l(b) in Table 2 of exh P2 are the most suitable comparables in terms of location (proximity) to the subject land and time of award (being one year different) and also in terms of size but allowing suitable adjustments for shape of land and access in 1973. Compensation of RM45,433 per hectare was paid for lease 6073 while RM56,100 per hectare was paid for KOT 14305 and RM46,788 per hectare was paid for Lot 35. Having allowed for the necessary adjustments, the assessors have arrived at an opinion that the fair market value for the subject land as at 19 April 1973 was RM45,000 per hectare. I concur with their opinion.

**[38]** With regard to the objector's claim for severance and injurious affection, we do not find any amount should be awarded in respect of these two claims. After the subject land was severed, I do not think the remaining two portions have suffered from diminution in their value. Although they may be diamond shaped, that in itself cannot justify a loss in value because they have each been issued with title which shows that they are held under special conditions which state that 'This land is to be used only for agriculture purposes'. So their shape should not greatly affect their use. As far as injurious affection is concerned, there is no evidence to support the claim. No diminution to earnings from the land had been demonstrated either.

**[39]** In the result I make the following orders in this reference.

**[40]** I direct that the Superintendent's Award be increased to RM45,000 per hectare. Since 2.122 hectares were acquired, this make RM95,040 payable. Since the objector had already been paid RM14,000, I direct that the excess of RM81,040 together with interest at 4% per annum from 4 December 1995 (being the date of possession) to the date of payment in accordance with s 69 of the Code, be paid to the objector. Since the objector's claim to be paid RM60,000 per hectare exceeds by 20% the amount awarded by us s 67(c) of the Code stipulates that no costs be awarded to it. I also direct that the assessors be paid RM100 for each day's attendance in court.

*Superintendent's award be increased to RM45,000 per hectare.*

Reported by Loo Lai Mee